Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of	) **MM DOCKET NO. 93-300**
	)
STEPHEN O. MEREDITH	) **File No. BPH-920430MD**
	)
AL HAZELTON	) File No. BPH-920430ME
	)
For a Construction Permit for	)
a New FM Station on Channel 243C1	)
at Audubon, Iowa	)

To: Honorable John M. Frysiak
Administrative Law Judge

OPPOSITION TO PETITION TO ENLARGE ISSUES

Stephen O. Meredith ("Mr. Meredith"), by and through counsel and pursuant to §1.229 of the Commission's rules, hereby submits his Opposition to the Petition To Enlarge Issues filed February 18, 1994, by Al Hazelton ("Hazelton") in the above-captioned proceeding.[1] Hazelton's Petition is not supported by law or fact and should be summarily denied. In opposition, the following is shown:

There is No Basis in Fact for Enlargement of Issues

1. In his Integration and Diversification Statement, filed January 10, 1994,Mr. Meredith stated that he "has no cognizable or attributable interest in any medium of mass communications." During the discovery phase of this case, Mr. Meredith provided information showing that Mr. Meredith has a minuscule investment in a limited partnership that holds warrants entitling the limited partnership to acquire a

[1] This Opposition is timely filed within 10 days of the date Hazelton's petition was filed (plus 3 days for mail service), or on March 3, 1994.

small amount of non-voting stock in a company that holds broadcast licenses. Hazelton seeks issues to determine "whether Meredith fully disclosed information in response to a discovery request." In response, Meredith shows herein that (1) he has already disclosed the information in response to Hazelton's request; and (2) that Hazelton has failed to make out a prima facie case for enlargement of the issues. Hazelton's petition is so devoid of merit that the act of filing it borders on an abuse of process.

2. Meredith holds certain passive, non-voting limited partnership interests in a limited partnership called "TA Investors."[2] According to the 1992 Schedule K-1 provided to Meredith by TA Investors in connection with Meredith's income tax return preparation, his ownership interest in TA Investors is 0.00698122 or 0.698122 percent. TA Investors holds a passive ownership in warrants to purchase non-voting stock in certain broadcast licensees, none of which produce principal city contours that overlap Audubon, Iowa. Such stock warrants entitle TA Investors to purchase non-voting common stock constituting less than 0.0018 (0.18 percent) of the common stock of the issuer. As a result, Mr. Meredith's maximum direct or indirect potential ownership in such licensees is less than 0.00001257 (0.001257 percent). All of the above was disclosed to Hazelton February 16, 1994, when Mr. Meredith filed his "Partial Opposition to Motion to Compel." A copy of Mr. Meredith's Declaration in support of that Partial Opposition is attached hereto as Exhibit 1. In his Declaration,

[2] Hazelton has based his petition on an apparent misunderstanding that Mr. Meredith's investment is in TA Associates. Mr. Meredith's investment is in "TA Investors."

Mr. Meredith stated that the only document (other than his balance sheet) of which he was aware reflecting his percentage ownership interest in TA Investors is IRS Form K-1 which was delivered to his counsel for delivery to Hazelton's counsel. Thus, as of February 16, 1994, the issue troubling Hazelton was resolved by Mr. Meredith's disclosure of the relevant information in response to Hazelton's discovery request.

There Is No Legal Basis for the Enlargement of Issues

3. As a precondition to the enlargement of the issues here, Hazelton has the burden to present a prima facie showing that there are substantial and material questions of fact that the public interest would not be served by a grant of Mr. Meredith's application. See Title 47 U.S.C. §309(a) and (e). This is the standard that must be met by one seeking to enlarge the issues. See Fox Television Stations, Inc., 8 FCC Rcd 2361, 72 RR 2d 297, 316, ¶52 (1993), where the Commission refused to add lack of candor issues because the movant failed to make out "on the basis of ...the pleadings filed...," id., a substantial and material question of fact over Fox's truthfulness..." [emphasis supplied]. Hazelton has failed to carry this burden.

4. Hazelton acknowledges that the purpose of discovery is to disclose all relevant information concerning a party's application. See, Lee Optical and Associated Cos. Retirement and Pension Fund Trust, 60 RR 2d 460, 462 (Rev. Bd. 1986). Mr. Meredith has disclosed all relevant information with respect to his investment in TA Investors. Hazelton's claim that Mr. Meredith's minuscule

investment rises to the level of a reportable "media interest" is not correct.[3] Further, Hazelton argues that "...while the matter of attribution is relevant to such factors as multiple ownership and integration, it is simply not relevant in the diversification criterion, which is at issue herein." Hazelton offers no decision on point for his bald statement. Doylan Forney, 68 RR 2d 366, 373 (1990), cited by Hazelton is inapposite. In fact, it stands for the opposite proposition. There, the Commission refused to attribute to an applicant the media holdings of Broadcast Capital Fund ("Broadcap"), a venture capitalist that held the right to convert debt obligations to a non-controlling stock interest in broadcast licensees, where there was no showing that Broadcap had any intent to acquire the stock. The applicant in question was a Broadcap director and Broadcap was routinely involved in performing a variety of tasks directly relating to the stations it financed. And, cases are legion to refute Hazelton's bald assertion that the matter of attribution is irrelevant to the diversification criterion. In Pittsfield Community TV Association, 99 FCC 2d 1321, 1322 (Rev. Bd. 1983), the Board did not attribute a principal's ownership of less than one percent of the stock of CBS, Inc., while considering an applicant's diversification. In Daytona Broadcasting Co., 103 FCC 2d 931 (1986), the Commission found that limited partnership interests are non-cognizable for diversification purposes. In light of these cases, Hazelton's argument must be disregarded as unsupported by the law.

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[3] In Beach Broadcasting Limited Partnership, 6 FCC Rcd 885, [68 RR 2d 1456, 1457](Rev. Bd. 1991), the Review Board held that the deadline for divestiture pledges "only applies to information required to be reported in the application form." As shown infra, Mr. Meredith was not required to report his investment in TA Investors in the application form.

5. Mr. Meredith holds a minuscule investment in a company that holds warrants that could possibly be converted at some point into a minuscule non-voting stock interest in broadcast licensees. Hazelton has not cited a single Commission rule, policy or case for the proposition that such an investment is considered a "media interest." The investment could only become a "media interest" when and if TA Investors converts its warrants into non-voting stock. Even then, the "media interest" that would be created would be a noncognizable and non-attributable one. FCC Form 301 requires an applicant to report "existing **attributable** interests in any broadcast station, including the nature and size of such interests [emphasis added]." See FCC Form 301 (February 1992 version) at p. 4.[4] Commission precedent holds that warrants, such as the ones held by TA Investors, are noncognizable and non-attributable interests. See, Attribution of Ownership Interests, 97 FCC 2d 997 (1984) and Channel 32 Broadcasting Company, 5 FCC Rcd 7373 (Rev. Bd. 1990).

6. In Attribution of Ownership Interests, 97 FCC 2d at 999, the Commission commented that the attribution rules define what constitutes a "cognizable interest." Generally speaking, the Commission will attribute a cognizable interest where it finds that the interest "will confer on its holder that degree of influence or control over the licensee and its facilities as should subject it to limitation by the multiple ownership

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[4] The Form also seeks information on "All other ownership interests of **5 percent or more** (whether or not attributable)...in broadcast, cable or newspaper entities **in the same market**.... FCC Form 301 (February 1992 version), at p. 4 [emphasis added]. Mr. Meredith's investment, on the order of 0.001257 percent, does not approach the FCC's 5 percent benchmark and would not be reportable on the Form, even if the media interests were in the same market.

rules." Attribution of Ownership Interests, 97 FCC 2d at 999; see also, Instructions To FCC Form 301 (February 1992 version), at pp. 4-5. The Commission has specifically ruled that warrants, debentures and other convertible interests shall be treated as non-voting stock interests and, therefore, are considered non-cognizable. Id at 1021.[5] Therefore, Mr. Meredith's response in his Integration and Diversification Statement was accurate - "Mr. Meredith has no cognizable or attributable interest in any medium of mass communications."

7. Furthermore, the Commission has found that, in the case of widely-held companies, stockholders with less than 5 percent of the corporations voting stock are unlikely to be able to exert control or programming influence on the basis of that stockholding, and therefore such interests are non-cognizable. Id at 1004-1006. In this case, Mr. Meredith's investment in TA Investors is not only non-voting, but the maximum amount of direct or indirect ownership that it could ever confer upon him would be 0.001257 percent of a licensee. The Commission has never found that the holder of such a minute non-voting ownership interest could ever exert enough control over a licensee as to classify that interest as "cognizable."

8. Even assuming it could be found that Mr. Meredith's investment rose to the level of a reportable "media interest," he has not made misrepresentations nor lacked candor with respect to his response to Section 1.325(c)(2)(v) of the Rules.

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[5] See also, §73.3555 of the rules at Note F, which states, in part: "Holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected."

Upon review of Hazelton's Motion to Compel, Mr. Meredith reconsidered his previous position, and voluntarily disclosed the sole document (IRS Schedule K-1) of which he was aware reflecting his percentage ownership interest in TA Investors. Furthermore, Mr. Meredith provided a declaration in which he described his investment. Therefore, there is no basis to conclude that Mr. Meredith has made misrepresentations or has lacked candor.[6]

9. It is well-settled that in order for the Commission to find that a misrepresentation has occurred, it must also find the requisite "intent to deceive." See, Pinelands, Inc., 71 RR 2d 175, 183 (1992), citing, Fox River Broadcasting, Inc., 93 FCC 2d 127 (1983). See also WHW Enterprises, Inc. v. FCC, 753 F. 2d 1132, 1139 (D. C. Cir. 1985) and Intercontinental Radio, Inc., 98 FCC 2d 608, 639 (Rev. Bd. 1984) ("[O]missions or inconsistencies unaccompanied by evidence of a 'willingness to deceive' are not a cause for action"), modified on other grounds, 57 RR 2d 1616 (1985)(citation omitted). Hazelton has neither alleged that Mr. Meredith has a willingness to deceive, nor has he shown any motive for Mr. Meredith to conceal his minuscule investment. There is no such motive in this case, for there would have been no reason for Mr. Meredith to want to conceal the existence of his investment. Even if TA Investors were to one day convert its warrants into non-

[6] This information was filed with the Commission two days prior to Hazelton filing his Petition. Hazelton's counsel must have received a copy of the filing, since his Petition contains a reference to this information. See Petition at note 2. It boggles the mind that Hazelton could argue that Mr. Meredith "lacked candor" when his counsel possessed a copy of Mr. Meredith's submission at the time his Petition was filed.

voting stock, such an action would never impact Mr. Meredith's diversification posture in this case, given the minute size and non-voting nature of the investment. The addition of a misrepresentation issue in such a case is simply not warranted.

10. It should also be noted that as long ago as 1979, the Commission decried the proliferation of litigiousness which the Commission's procedures seem to encourage, the lack of decisional significance of many of the issues parties attempted to raise against their opponents, and the defeat of objectives originally intended to expedite the hearing process. See Processing of Contested Broadcast Applications, 72 FCC 2d 202, 45 RR 2d 1220 (1979), where the Commission stated: "We would expect...that such requests [for enlargement of issues] would be limited to matters of substantial decisional significance." Hazelton has completely ignored this standard. It is probable that, with the finding by the Court of Appeals in Bechtel v. FCC, ____ F. 2d ____, [74 RR 2d 348] (D.C. Cir. 1993) that the integration criteria are arbitrary and capricious, Hazelton's Petition is a thinly veiled attempt to trump up an issue against Mr. Meredith in the vain hope that he will be disqualified so that Hazelton could win by default.[7]

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[7] The Commission in Charisma Broadcasting Corporation, 8 FCC Rcd 864 (1993) condemned the elevation of form over substance leading to unwarranted gamesmanship and ambush tactics. There, applicant principals in their integration statement omitted to quantify the number of hours they proposed to work at a proposed television station. The Commission affirmed the Review Board's finding that such an omission was a "harmless technicality." Here, Mr. Meredith made a true statement in his integration and diversification statement, and later revealed details of his investment. In light of Charisma, Mr. Meredith's omission in his Integration and Diversification Statement of a description of his investment in TA Investors would be, at worst, a "harmless technicality."

Conclusion

Mr. Meredith disclosed all relevant information concerning his investment. While Mr. Meredith's investment in TA Investors clearly does not constitute a reportable "media interest" under any definition, he voluntarily revealed detailed information about the investment. Since Hazelton has failed to meet the factual or legal standard for enlargement of the issues, his Petition should therefore be denied.

Respectfully submitted,

STEPHEN O. MEREDITH

By: _____
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March 3, 1994

EXHIBIT 1

Declaration

I, Stephen O. Meredith, hereby declare, under penalty of perjury, that the following facts are true and correct:

1. I am an applicant for a new FM Station on Channel 243C1 in Audubon, Iowa.

2. I hold certain passive, non-voting limited partnership interests in TA Investors. According to the 1992 Schedule K-1 provided to me by TA Investors, my ownership interest in TA Investors is .00698122.

3. My only direct or indirect ownership in mass media, whether through TA Investors or in any way relating to TA Associates is via TA Investors' passive ownership of warrants to purchase non-voting stock in certain broadcast licensees, none of which produce principal city contours that overlap Audubon, Iowa. Such warrants entitle TA Investors to purchase non-voting common stock constituting less than .0018 of the common stock of the issuer. As a result, my maximum direct or indirect potential ownership in such licensees is less than .00001257.

4. The only document (other than my balance sheet) of which I am aware reflecting my percentage ownership interest in TA Investors is IRS Form K-1 provided to me annually by TA Investors. I have delivered a copy of the Form K-1 for calendar year 1992 to my counsel for delivery to opposing counsel. I do not yet have a Form K-1 for 1993.

Executed this 16th day of February, 1994.

Stephen O. Meredith

CERTIFICATE OF SERVICE

I, Patricia A. Neil, a secretary in the law firm of Smithwick & Belendiuk, P.C., certify that on this 3rd day of March, 1994, copies of the foregoing were mailed via first class mail, postage pre-paid, to the following:

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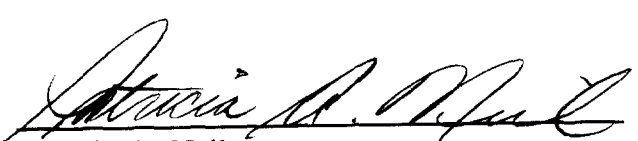

Patricia A. Neil